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10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 UNITED STATES OF AMERICA,) Case No: 5:19-cr-75 EJD
14 Plaintiff,)
15 v.) UNITED STATES' SENTENCING
16 COLLIN RILEY HOWARD,) MEMORANDUM
17 Defendant.)
18)
19 _____)

20 I. INTRODUCTION

21 On February 14, 2019, Collin Riley Howard was charged by Indictment in the Northern District
22 of California with Distribution and Possession with Intent To Distribute Cocaine in violation of 21
23 U.S.C. §§ 841(a)(1) and 841(b)(1)(C) (Count One), Distribution and Possession with Intent To
24 Distribute Methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(C) (Count Two),
25 Distribution and Possession with Intent To Distribute Methamphetamine in violation of 21 U.S.C. §§
26 841(a)(1) and 841(b)(1)(B)(viii) (Count Three), and Possession with Intent To Distribute
27 Methamphetamine in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(viii) (Count Four). Dkt. 1.
28 The Indictment contains a Forfeiture Allegation pursuant to 21 U.S.C. § 853. Dkt. 1. On June 2, 2020,

1 the defendant pled guilty pursuant to a plea agreement. Dkt. 35, 36. Judgment and Sentencing are
 2 currently set for October 3, 2022, at 1:30 p.m., before the Honorable Edward J. Davila, United States
 3 District Judge. Dkt. 70.

4 II. NATURE AND CIRCUMSTANCES OF THE OFFENSE CHARGED

5 In 2018, Howard developed the “Banana Plug” application, which was available on the Apple
 6 App Store. Dkt. 74 (Presentence Investigation Report (“PSR”)) at ¶ 7. The Banana Plug App offered
 7 for sale contraband, including cocaine, “Molly,” and “Shrooms.” *Id.* The App also invited customers to
 8 make special requests. *Id.* Howard hung up posters advertising the Banana Plug App around the
 9 campus of the University of California Santa Cruz (“UCSC”), where he was a student. *Id.* at ¶¶ 7, 9.

10 On October 28, 2018, UCSC Police Department officers located a poster advertising the Banana
 11 Plug App affixed to a UCSC dormitory wall. PSR at ¶ 8. The poster read “NEED ANY
 12 SUBSTANCES?” and “SEARCH FOR BANANA PLUG ON THE APP STORE,” in addition to
 13 displaying the words “acid, shrooms, alc, and bud” in the corners of the poster. *Id.* The officers located
 14 the Banana Plug App on the Apple App Store. *Id.* The Banana Plug App description advertised the sale
 15 of controlled substances, alcoholic beverages, and tobacco products, and the developer for the App was
 16 listed as Collin Howard. *Id.* The officers downloaded the Banana Plug App and followed prompts to
 17 gain access to it. *Id.* at ¶ 9. Upon access, the App displayed screens offering numerous types of
 18 contraband with prices for specific amounts and current availability. *Id.*

19 On October 29, 2018, a UCSC officer acting undercover used the Banana Plug App to request a
 20 purchase of marijuana in the amount of \$52.00 and cocaine in the amount of \$44.00. PSR at ¶ 10.
 21 Following that request, the officer was notified in the App that he would be contacted via Snapchat from
 22 “plurp911.” *Id.* The officer messaged “plurp911” via Snapchat regarding the request, and received a
 23 reply “yea got it u free to meet tonight.” *Id.*

24 On November 7, 2018, an undercover agent continued communication with “plurp911” and
 25 arranged a meeting at UCSC Quarry Plaza to make a controlled purchase of the narcotics. PSR at ¶ 11.
 26 The undercover agent proceeded to meet with Howard and purchase 3.2 grams of marijuana and 0.301
 27 grams of cocaine for a total of \$96.00. *Id.*

1 On November 13, 2018, the undercover agent conducted a second controlled purchase from
 2 Howard of 1.827 grams of pure methamphetamine and 11.7 grams of marijuana for a total of \$120.00.
 3 PSR at ¶ 12.

4 On November 20, 2018, the undercover agent conducted a third controlled purchase from
 5 Howard of 5.738 grams of pure methamphetamine for \$240.00. PSR at ¶ 13.

6 On November 28, 2018, an undercover agent prearranged with Howard to purchase two ounces
 7 of crystal methamphetamine for \$850.00 per ounce, and met with Howard at a UCSC library to make
 8 the fourth controlled purchase. PSR at ¶ 14. During that meeting, Howard retrieved a package
 9 containing methamphetamine from his backpack, and was arrested. *Id.* A search of Howard's person
 10 and backpack uncovered 26.5 grams of pure methamphetamine, 63.6 grams of marijuana, suspected
 11 LSD, Melatonin pills, Robitussin, cigarettes, plastic baggies, and a digital scale. *Id.* A subsequent
 12 search of Howard's dormitory room uncovered, among other items, 92.2 grams of psilocybin
 13 mushrooms. *Id.*

14 **III. CRIMINAL HISTORY**

15 Collin Howard is a 22-year-old man with no prior criminal history. PSR at 3, ¶¶ 33–39. He falls
 16 into Criminal History Category I with no criminal history points. *See id.* at ¶ 35.

17 **IV. TOTAL OFFENSE LEVEL**

18 With a Total Offense Level of 20, and a Criminal History Category of I, Howard's advisory
 19 guideline range is 33 to 41 months. Howard is eligible for safety valve relief under 18 U.S.C.
 20 § 3553(f)(2).

21 **V. SENTENCING FACTORS FOR CONSIDERATION**

22 Factors appropriate for consideration pursuant to 18 U.S.C. § 3553(a) include not only the nature
 23 and circumstances of the offense, but the history and characteristics of Howard. Additionally, the Court
 24 must consider whether the sentence reflects the seriousness of the offense; whether the punishment
 25 affords adequate deterrence to criminal conduct; whether the sentence protects the public from future
 26 crimes of the defendant; and whether the sentence provides Howard with needed educational or
 27 vocational training, medical care, or other correctional treatment in the most effective manner.

The seriousness of Howard’s crime, along with his criminal history, is properly recognized in the USSG Guidelines range of 33 to 41 months. Although the crime is serious, Howard engaged in rehabilitation efforts that should be considered by this Court in imposing an appropriate sentence. Howard was accepted into the Conviction Alternatives Program in August 2020, and was removed in May 2021. PSR at ¶ 54. According to the U.S. Probation Office, Howard is presently attending college, has been employed full-time since 2021, and has remained sober but missed two urinalyses and submitted three diluted tests. *Id.* at ¶¶ 55, 57, 59. The question is what variance is warranted for the rehabilitation efforts he made.

VI. SENTENCING RECOMMENDATION

Probation recommends a variance from the Guidelines for a sentence of 24 months in prison, a three-year term of supervised release, no fine, and a \$400 mandatory special assessment. The United States does not make a sentencing recommendation in this case, but urges the Court to impose a sentence that protects the community while recognizing Howard's efforts at rehabilitation during pretrial release.

DATED: September 26, 2022

Respectfully submitted,

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/s/
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